

REFERENCE TITLE: homeowners' associations; management companies

State of Arizona
House of Representatives
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2008

HB 2789

Introduced by
Representatives McGuire: Ableser, Alvarez, Brown, Campbell CL, Gallardo,
Garcia M, Lopez, Miranda B, Rios P, Schapira, Thrasher, Tom, Senator Rios

AN ACT

AMENDING TITLE 32, CHAPTER 20, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 11; AMENDING SECTIONS 33-1243 AND 33-1811, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 32, chapter 20, Arizona Revised Statutes, is amended
3 by adding article 11, to read:

4 ARTICLE 11. ASSOCIATION PROPERTY MANAGERS

5 32-2199.01. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ASSOCIATION" MEANS A CONDOMINIUM ASSOCIATION AS DEFINED IN SECTION
8 33-1202 OR A PLANNED COMMUNITY ASSOCIATION AS DEFINED IN SECTION 33-1802.

9 2. "ASSOCIATION PROPERTY MANAGER" OR "MANAGER" MEANS A PERSON OR
10 ENTITY WHO, FOR COMPENSATION, PROVIDES FOR A CONDOMINIUM ASSOCIATION OR
11 PLANNED COMMUNITY ASSOCIATION PROPERTY MANAGEMENT SERVICES THAT MAY INCLUDE
12 PURCHASING, CONTRACTING, BOOKKEEPING, MAINTENANCE OR ADMINISTRATIVE FUNCTIONS
13 ON BEHALF OF THE BOARD OF DIRECTORS OF AN ASSOCIATION.

14 32-2199.02. Registration; renewal; fees; fund

15 A. AN INDIVIDUAL WHO WISHES TO ACT AS AN ASSOCIATION PROPERTY MANAGER
16 FOR A CONDOMINIUM OR PLANNED COMMUNITY ASSOCIATION SHALL APPLY FOR
17 REGISTRATION BY SUBMITTING TO THE DEPARTMENT A COMPLETED APPLICATION FORM
18 PRESCRIBED BY THE DEPARTMENT WITH THE INITIAL REGISTRATION FEE. THE
19 APPLICANT SHALL ALSO FILE WITH THE DEPARTMENT AN AFFIDAVIT STATING WHETHER
20 THE APPLICANT HAS BEEN CONVICTED OF A FELONY OR ANY MISDEMEANOR INVOLVING
21 DISHONESTY OR MORAL TURPITUDE IN THIS OR ANY OTHER STATE WITHIN THE LAST TEN
22 YEARS. THE DEPARTMENT MAY REVIEW THE AFFIDAVIT AND ISSUE OR DENY THE
23 REGISTRATION BASED ON ITS FINDINGS.

24 B. REGISTRATION IS VALID FOR TWO YEARS. AN INDIVIDUAL MAY RENEW A
25 REGISTRATION BY SUBMITTING TO THE DEPARTMENT A RENEWAL FORM PRESCRIBED BY THE
26 DEPARTMENT WITH THE RENEWAL FEE ON OR BEFORE THE DATE THE REGISTRATION
27 EXPIRES.

28 C. A BROKER OR AGENT WHO IS LICENSED PURSUANT TO THIS CHAPTER MAY
29 REGISTER AND RENEW REGISTRATION AS AN ASSOCIATION PROPERTY MANGER WITHOUT
30 PAYING THE FEE PRESCRIBED BY THIS SECTION.

31 D. THE DEPARTMENT SHALL ISSUE A CERTIFICATE OF REGISTRATION TO AN
32 INDIVIDUAL WHO COMPLIES WITH THIS SECTION AND WHO IS NOT PROHIBITED FROM
33 REGISTERING PURSUANT TO SECTION 32-2199.04.

34 E. A PERSON SHALL NOT ACT AS AN ASSOCIATION PROPERTY MANAGER IF THE
35 PERSON IS NOT REGISTERED PURSUANT TO THIS SECTION.

36 F. THE DEPARTMENT SHALL COLLECT FROM EACH INDIVIDUAL A FEE FOR AN
37 INITIAL REGISTRATION, FOR A RENEWAL AND FOR A DUPLICATE REGISTRATION
38 CERTIFICATE AS DETERMINED BY THE DEPARTMENT BY RULE.

39 G. THE DEPARTMENT SHALL DEPOSIT MONIES COLLECTED PURSUANT TO
40 SUBSECTION F OF THIS SECTION IN THE DEPARTMENT'S ASSOCIATION PROPERTY
41 MANAGEMENT FUND.

42 H. THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN THE ASSOCIATION
43 PROPERTY MANAGEMENT FUND FOR MONIES RECEIVED PURSUANT TO THIS SECTION.
44 MONIES IN THE ASSOCIATION PROPERTY MANAGEMENT FUND SHALL BE USED FOR THE
45 PURPOSES OF IMPLEMENTING AND ENFORCING THIS ARTICLE.

1 32-2199.03. Association property manager conduct; rules

2 AN ASSOCIATION PROPERTY MANAGER:

3 1. SHALL NOT KNOWINGLY MISREPRESENT ANY INFORMATION OR KNOWINGLY ACT
4 IN A FRAUDULENT MANNER.

5 2. SHALL PROPERLY ACCOUNT FOR AND MAINTAIN ALL MONIES RECEIVED AND
6 PAID ON BEHALF OF AN ASSOCIATION.

7 3. SHALL MAINTAIN APPROPRIATE BOOKS AND RECORDS TO DEMONSTRATE THAT
8 MONIES HAVE BEEN PROPERLY RECEIVED AND PAID ON BEHALF OF AN ASSOCIATION.

9 4. SHALL MAINTAIN A PERFORMANCE BOND, FINANCIAL RESERVES OR ANOTHER
10 FORM OF FINANCIAL ASSURANCE AS DETERMINED BY THE DEPARTMENT BY RULE. THE
11 DEPARTMENT MAY ADOPT RULES THAT CONSIDER THE SIZE OF THE COMMUNITY OR AMOUNT
12 OF MONEY BEING MANAGED, OR BOTH, THE LEVEL OF AUTHORITY EXERCISED BY THE
13 ASSOCIATION PROPERTY MANAGER AND ANY OTHER FACTORS THE DEPARTMENT DEEMS
14 APPROPRIATE.

15 32-2199.04. Disciplinary actions

16 A. ON THE COMPLAINT OF ANY PERSON OR ON ITS OWN MOTION, THE DEPARTMENT
17 SHALL INVESTIGATE ANY SUSPECTED VIOLATION OF THIS ARTICLE BY AN ASSOCIATION
18 PROPERTY MANAGER. IF THE DEPARTMENT FINDS A VIOLATION IT MAY ISSUE A LETTER
19 OF CONCERN.

20 B. IF THE DEPARTMENT FINDS THAT AN ASSOCIATION PROPERTY MANAGER HAS
21 COMMITTED ANY OF THE FOLLOWING VIOLATIONS, IT SHALL REVOKE OR SUSPEND THE
22 MANAGER'S REGISTRATION:

23 1. SECURED REGISTRATION BY FRAUD OR DECEIT.

24 2. COMMITTED AN ACT OR IS RESPONSIBLE FOR AN OMISSION INVOLVING FRAUD
25 OR KNOWING MISREPRESENTATION WITH THE INTENT TO OBTAIN A BENEFIT.

26 3. KNOWINGLY VIOLATED SECTION 32-3653.

27 C. THE DEPARTMENT SHALL:

28 1. SUSPEND THE MANAGER'S REGISTRATION FOR AT LEAST SIX MONTHS ON THE
29 FINDING OF A FIRST VIOLATION PURSUANT TO SUBSECTION B OF THIS SECTION.

30 2. SUSPEND THE MANAGER'S REGISTRATION FOR AT LEAST TWELVE MONTHS ON
31 THE FINDING OF A SECOND VIOLATION PURSUANT TO SUBSECTION B OF THIS SECTION.

32 3. REVOKE THE MANAGER'S REGISTRATION ON THE FINDING OF A THIRD OR
33 SUBSEQUENT VIOLATION PURSUANT TO SUBSECTION B OF THIS SECTION.

34 D. THE DEPARTMENT SHALL NOT IMPOSE DISCIPLINE UNTIL THE MANAGER HAS
35 BEEN PROVIDED AN OPPORTUNITY FOR A HEARING BEFORE THE DEPARTMENT PURSUANT TO
36 TITLE 41, CHAPTER 6, ARTICLE 10. THE DEPARTMENT SHALL NOTIFY THE MANAGER OF
37 THE CHARGES AND THE DATE AND TIME OF THE HEARING. THE NOTICE MAY BE
38 PERSONALLY SERVED OR SENT BY CERTIFIED MAIL TO THE MANAGER'S LAST KNOWN
39 ADDRESS. EXCEPT AS PROVIDED IN SECTION 41-1092.08, SUBSECTION H, THE FINAL
40 DECISION OF THE DEPARTMENT IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE
41 12, CHAPTER 7, ARTICLE 6.

42 E. THE DEPARTMENT SHALL NOT RENEW A MANAGER'S REGISTRATION DURING THE
43 TIME THE REGISTRATION IS SUSPENDED OR REVOKED.

44 32-2199.05. Rules

45 THE DEPARTMENT SHALL ADOPT RULES FOR THE PURPOSE OF ADMINISTERING THIS
46 ARTICLE.

1 2. Four years after all declarants have ceased to offer units for sale
2 in the ordinary course of business.

3 F. A declarant may voluntarily surrender the right to appoint and
4 remove officers and members of the board of directors before termination of
5 the period prescribed in subsection E **OF THIS SECTION**, but in that event the
6 declarant may require, for the duration of the period of declarant control,
7 that specified actions of the association or board of directors, as described
8 in a recorded instrument executed by the declarant, be approved by the
9 declarant before they become effective.

10 G. Not later than the termination of any period of declarant control,
11 the unit owners shall elect a board of directors of at least three members,
12 at least a majority of whom must be unit owners. The board of directors
13 shall elect the officers. The board members and officers shall take office
14 upon election.

15 H. Notwithstanding any provision of the declaration or bylaws to the
16 contrary, the unit owners, by a majority vote of members entitled to vote and
17 voting on the matter at a meeting of the members called pursuant to this
18 section at which a quorum is present, may remove any member of the board of
19 directors with or without cause, other than a member appointed by the
20 declarant. For purposes of calling for removal of a member of the board of
21 directors, other than a member appointed by the declarant, the following
22 apply:

23 1. In an association with one thousand or fewer members, on receipt of
24 a petition that calls for removal of a member of the board of directors and
25 that is signed by the number of persons who are entitled to cast at least
26 twenty-five per cent of the votes in the association or one hundred votes in
27 the association, whichever is less, the board shall call and provide written
28 notice of a special meeting of the association as prescribed by section
29 33-1248, subsection B.

30 2. Notwithstanding section 33-1248, subsection B, in an association
31 with more than one thousand members, on receipt of a petition that calls for
32 removal of a member of the board of directors and that is signed by the
33 number of persons who are entitled to cast at least ten per cent of the votes
34 in the association or one thousand votes in the association, whichever is
35 less, the board shall call and provide written notice of a special meeting of
36 the association. The board shall provide written notice of a special meeting
37 as prescribed by section 33-1248, subsection B.

38 3. The special meeting shall be called, noticed and held within thirty
39 days after receipt of the petition.

40 4. For purposes of a special meeting called pursuant to this
41 subsection, a quorum is present if the number of owners to whom at least
42 twenty per cent of the votes or one thousand votes, whichever is less, are
43 allocated is present at the meeting in person or as otherwise permitted by
44 law.

1 5. If a civil action is filed regarding the removal of a board member,
2 the prevailing party in the civil action shall be awarded its reasonable
3 attorney fees and costs.

4 6. The board of directors shall retain all documents and other records
5 relating to the proposed removal of the member of the board of directors for
6 at least one year after the date of the special meeting and shall permit
7 members to inspect those documents and records pursuant to section 33-1258.

8 7. A petition that calls for the removal of the same member of the
9 board of directors shall not be submitted more than once during each term of
10 office for that member.

11 I. For an association in which board members are elected from
12 separately designated voting districts, a member of the board of directors,
13 other than a member appointed by the declarant, may be removed only by a vote
14 of the members from that voting district, and only the members from that
15 voting district are eligible to vote on the matter or be counted for purposes
16 of determining a quorum.

17 J. Unless any provision in the condominium documents requires an
18 annual audit by a certified public accountant, the board of directors shall
19 provide for an annual financial audit, review or compilation of the
20 association. The audit, review or compilation shall be completed no later
21 than one hundred eighty days after the end of the association's fiscal year
22 and shall be made available upon request to the unit owners within thirty
23 days after its completion.

24 K. THE ASSOCIATION SHALL NOT EMPLOY OR OTHERWISE PROVIDE COMPENSATION
25 TO A PERSON FOR PROVIDING ASSOCIATION PROPERTY MANAGEMENT SERVICES UNLESS
26 THAT PERSON IS REGISTERED AS REQUIRED BY TITLE 32, CHAPTER 20, ARTICLE 11.

27 ~~K~~ L. This section does not apply to timeshare plans or associations,
28 or the period of declarant control under timeshare instruments, that are
29 subject to chapter 20 of this title.

30 Sec. 3. Section 33-1811, Arizona Revised Statutes, is amended to read:
31 33-1811. Board of directors; contracts; conflict

32 A. THE ASSOCIATION SHALL NOT EMPLOY OR OTHERWISE PROVIDE COMPENSATION
33 TO A PERSON FOR PROVIDING ASSOCIATION PROPERTY MANAGEMENT SERVICES UNLESS
34 THAT PERSON IS REGISTERED AS REQUIRED BY TITLE 32, CHAPTER 20, ARTICLE 11.

35 B. If any contract, decision or other action for compensation taken by
36 or on behalf of the board of directors would benefit any member of the board
37 of directors or any person who is a parent, grandparent, spouse, child or
38 sibling of a member of the board of directors or a parent or spouse of any of
39 those persons, that member of the board of directors shall declare a conflict
40 of interest for that issue. The member shall declare the conflict in an open
41 meeting of the board before the board discusses or takes action on that
42 issue, and that member may then vote on that issue. Any contract entered
43 into in violation of this section is void and unenforceable.

44 Sec. 4. Effective date

45 This act is effective from and after December 31, 2008.